Department of Corrections
Hearings & Release Unit
Guidelines for 90-Day Cap on Incarceration

Instruction on application of Minn. Stat. 244.30 (2009)
Cap on Incarceration for First-Time Supervised Release Violators
Exception for Sex Offenders

An individual whose supervised release status on the current offense is revoked for the first time may be incarcerated for no more than 90 days unless: (1) the current offense is criminal sexual conduct in the first, second, third, fourth, or fifth degree or criminal sexual predatory conduct; or (2) substantial and compelling reasons exist to believe that a longer incarceration period is necessary to protect the public.

Step 1. Identify whether the individual's supervised release on the current offense has previously been revoked. If yes, the 90-day cap does not apply.

Step 2. Identify the individual's current offense. The 90-day cap does not apply if offender is on supervised release for any of the following crimes:

- Criminal sexual conduct first degree (609.342)
- Criminal sexual conduct second degree (609.343)
- Criminal sexual conduct third degree (609.344)
- Criminal sexual conduct fourth degree (609.345)
- Criminal sexual conduct fifth degree (609.3451)
- Criminal sexual predatory conduct (609.3453)

Step 3. Identify whether substantial and compelling reasons exist to believe that incarceration for more than 90 days is necessary to protect the public. The following factors should be used to determine whether substantial and compelling reasons exist:

- **Seriousness of the violation of the conditions of release** (including but not limited to whether the violation posed a risk to public safety or involved contact with minors or vulnerable adults that was intentional, purposeful, or sexual in nature);
- **Underlying offense involved loss of life** (including but not limited to murder in the first, second, or third degree);
- **Fugitive risk** (including but not limited to current offense involved length of time on fugitive status or criminal history involved escape and fleeing behavior);
- **Aggravated criminal history**
  Includes, but not limited to (1) individuals subject to predatory registration with a level 2 or 3 risk level determination; (2) criminal history involves assaults, use or possession of weapons, threatening or stalking behavior, or victim injury; or (3) previous history of release violation or institutional discipline that were responded to with a formal action.